20-000442-0058

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10422

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

- versus -

NOTICE OF RESOLUTION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. AVELINO G. ALFELOR, JR.
Bureau of Internal Revenue
Legal Division, Revenue Region 8A
36/F, Export Bank Plaza Bldg.
Sen. Gil Puyat Avenue cor. Chino Roces Avenue
Makati City

AGAN MONTENEGRO MALASAGA & CO.
7th Floor, Electra House Bldg.
115-117 Esteban St., Legazpi Village
1229 Makati City

GREETINGS:

You are hereby notified by these presents that on **April 16, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **April 17, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

AIR DRILLING ASSOCIATES PTE LTD.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10422

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

APR 16 2024; 8:10AM

x - x

RESOLUTION

MANAHAN, *J.*:

This resolves respondent's **Motion for Reconsideration**[1] filed through registered mail on January 18, 2024 and received by this Court on January 25, 2024, seeking the grant of the instant motion, the setting aside of the Court's *Decision* dated December 19, 2023 (Assailed Decision), and the denial instead of petitioner's judicial claim for refund.

Respondent argues that petitioner as sub-contractor of Energy Development Corporation (EDC), a Renewable Energy (RE) Developer, should have submitted a Department of Energy (DOE) Certificate of Registration, Board of Investments (BOI) Certificate of Registration, and DOE Certificate of Endorsement.

Respondent contends that petitioner's Official Receipt (OR) No. 0621 dated May 23, 2018 (Exhibit "P-49") was not stamped with the word "Zero-Rated" vis-à-vis OR No. 0620 dated May 18, 2018 (Exhibit "P-47") which is in violation of the invoicing requirements.

Lastly, respondent argues that the contracts between petitioner and EDC, marked as Exhibits "P-15", "P-16", and "P-

[1] Docket, CTA Case No. 10422, Vol. II, pp. 760-769.

17", were not connected to "Aerated Drilling Services NIGBU Site Package #1" or to petitioner's OR Nos. 0620 dated May 18, 2018 and 0621 dated May 23, 2018.

On the other hand, petitioner in its **Comment (To Respondent's Motion for Partial Reconsideration)**[2] filed on February 5, 2024, counter-argues that petitioner is not required under Republic Act (RA) No. 9513 to register as a DOE and BOI accredited supplier to be entitled to value-added tax (VAT) zero-rated on its sales to RE Developer.

Petitioner further argues that it submitted the necessary DOE Certificate of Registration, BOI Certificate of Registration, and DOE Endorsement Letter of all relevant renewable energy projects of EDC.

Petitioner insists that the term "Zero-Rated" is imprinted in its OR No. 0621 dated May 23, 2018 (Exhibit "P-49").

We resolve.

On the timeliness of the filing of the motion at hand, petitioner avers that it received the Assailed Decision on January 3, 2024, thus, it had fifteen (15) days from receipt of notice on January 3, 2024 or until January 18, 2024 within which to file its motion for reconsideration in accordance with Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals.[3] Respondent's *Motion for Reconsideration* on January 18, 2024 was timely filed.

Going now to the substance of the motion, we deny it for lack of merit.

Service Provider rendering services to an exempt-entity need not secure the DOE or BOI certification to avail of the zero-rated transaction

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[2] Docket, Vol. II, pp. 774-779.

[3] "SECTION 1. *Who may and when to file motion.*- **Any aggrieved party may seek a reconsideration** or new trial **of any decision**, resolution, or order **of the Court**. He shall file a motion for reconsideration or new trial **within fifteen days from the date he received notice of the decision**, resolution or order of the Court in question." (*Emphasis supplied*)

Respondent argues that petitioner being a sub-contractor of EDC should have submitted a DOE Certificate of Registration, BOI Certificate of Registration, and DOE Certificate of Endorsement.

Although the issue was already exhaustively discussed in the Assailed Decision, we would like to reiterate such disquisition, to wit:

> "It is clear from the foregoing provisions of RA No. 9513 and its IRR that RE Developer's entitlement to the benefit of VAT zero-rating on its sales of renewable energy under Section 15 (g) of RA No. 9513, in relation to Section 108 (B) (7), NIRC, as amended, rests upon its compliance with the requirements prescribed in Section 18 (A), (B) and (C), Rule 5, Part III of DOE DO No. DC2009-05-0008, but nowhere in the said law and IRR does it require the seller/supplier/contractor of services to RE Developers to obtain prior registration or accreditation with the DOE. Thus, petitioner needs only to present EDC's DOE Certificate of Registration as an RE Developer, BOI Registration, and DOE Certificate of Endorsement for purposes of availing the zero percent (0%) VAT incentive under RA 9513.
>
> Furthermore, **the CTA *En Banc* ruling in *Commissioner of Internal Revenue vs. CE Casecnan Water and Energy Company, Inc.* (CE Casecnan case) is not applicable to the present case as the party-claimant therein is a registered RE Developer, while the petitioner herein is a mere contractor or supplier of services of an RE Developer**. Moreover, the facts and circumstances therein are both not in all fours with those obtaining in the instant case as to warrant its application herein. Lastly, suffice it to state that this Court's decisions do not constitute precedents. Pertinently, only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.
>
> In view of the foregoing, the denial of petitioner's claim due to petitioner's failure to register as accredited and certified contractor of aerated drilling service supplier of EDC does not hold water." (*Emphasis supplied*)

Respondent may have been confused between the taxpayer rendering services to an exempt-entity through special law under Section 108(B)(3) of the 1997 National Internal Revenue Code (NIRC), as amended, and those RE entities selling such RE under Section 108(B)(7) of the same law.

In the case of RE entities, their VAT exemption is not only provided in the 1997 NIRC, as amended, but also under Section 15 of RA No. 9513. The condition for such entitlement is also provided under Section 18 of the said law and its implementing rules and regulations (IRR).

Thus, to avail of the VAT zero-rated transactions, RE entities are required to secure the required DOE Certificate of Registration, BOI Certificate of Registration, and DOE Certificate of Endorsement as provided in the IRR of RA No. 9513.

On the other hand, the entitlement for a zero-rating transaction by service providers under Section 108(B)(3) of the 1997 NIRC, as amended, is provided by the same law itself.

Considering there is no requirement for such entitlement under the 1997 NIRC, as amended, for as long as the service was rendered to exempt-entities, said service provider is not required to secure the DOE and BOI certifications.

However, in a claim for refund of input tax by such service provider, it is necessary that the RE entity to which the former had rendered its services, must have the required DOE and BOI certifications, which, in this case, were filed and proven by petitioner during trial.

A party cannot raise a new issue in a motion for reconsideration or on appeal.

Respondent raised the issue that OR Nos. 0621 dated May 23, 2018 (Exhibit "P-49") and 0620 dated May 18, 2018 (Exhibit "P-47") have not imprinted the word "zero-rated" on its faces, or several of the contract agreements between petitioner and EDC were not connected to its Aerated Drilling Services or to the said ORs.

However, a scrutiny of the respondent's Memorandum as well as his Answer in the instant petition, revealed that said issues were not raised as part of his defense nor indicated in his administrative findings for the denial of petitioner's claim for refund.

The denial relative to the ORs pertains to the use of petitioner's business name in said ORs in accordance with the required business style and not on the alleged absence of the printed word "zero-rated". There were also no findings or questions as to the relationship of the contract agreements between petitioner's Aerated Drilling Services and EDC's project by the Bureau of Internal Revenue's Letter Denial dated November 4, 2020.

In *Development Bank of the Philippines v. West Negros College, Inc.*,[4] the Supreme Court ruled that a party cannot raise a new issue in a motion for reconsideration or during an appeal, to wit:

> "... Moreover, it is a fundamental rule of procedure that higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal. On appeal, only errors specifically assigned and properly argued in the brief will be considered, with the exception of those affecting jurisdiction over the subject matter as well as plain and clerical errors."

The rationale for such rule is that litigant cannot change its theory of the case in fairness to the other party as held in *Chinatrust (Phils.) Commercial Bank v. Philip Turner*:[5]

> "Basic rules of fair play, justice, and due process require that arguments or issues not raised in the trial court may not be raised for the first time on appeal.
>
> In *Philippine Ports Authority v. City of Iloilo*:
>
> As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change theory on appeal. Points of law, theories, issues and arguments not brought to the attention of the lower court need not be, and ordinarily will not be, considered by a reviewing court, as these cannot be raised for the first time at such late stage. Basic considerations of due process underlie this rule. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit petitioner in this case to change its theory on appeal would thus be unfair to

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[4] G.R. No. 152359, May 21, 2004.
[5] G.R. No. 191458, July 03, 2017.

> respondent, and offend the basic rules of fair play, justice and due process. (Citations omitted)
>
> There is more reason for a reviewing court to refrain from resolving *motu proprio* an issue that was not even raised by a party. This Court has previously declared that:
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> "[C]ourts of justice have no jurisdiction or power to decide a question not in issue" and that a judgment going outside the issues and purporting to adjudicate something upon which the parties were not heard is not merely irregular, but extrajudicial and invalid."

There being no new and substantial arguments propounded by petitioner in its Motion, the Court finds no compelling reason to reverse the Assailed Decision.

WHEREFORE, respondent's *Motion for Reconsideration* is hereby **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(took no part)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice